

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Rules of Practice

Proposed Amendment: N.J.A.C. 14:1-1

Authorized By: Board of Public Utilities, Jeanne M. Fox, President,
Frederick F. Butler, Connie O. Hughes, and Jack Alter,
Commissioners.

Authority: N.J.S.A. 48:2-12, 48:2-13, 48:2-24 and 48:3-60.

Calendar Reference: Exempt pursuant to N.J.A.C. 1:30-3.3(a)5, by virtue of 60-day comment period.

BPU Docket Number: AX04111449

Proposal Number: PRN 2004-

Submit comments by March 4, 2005 to:
Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: AX04111449
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board is proposing amendments to its rules of practice, N.J.A.C. 14:1-1, to add a definition, to clarify deadlines for submitting comments on rules, and to establish a pilot study testing the feasibility of accepting rule proposal comments electronically.

The Board is proposing to add a definition of "person" to N.J.A.C. 14:1-1.3 for general use in Board rules. The definition is designed to allow a rule to refer to all possible types of entities when appropriate, without having to specify a list of possible entities. For example, the definition would allow a rule to state that "any person may file a petition", instead of the more cumbersome "a petition may be filed by any individual, corporation, partnership, government entity, etc." Accordingly, the definition is very broad.

Amendments are also proposed to N.J.A.C. 14:1-1.6, which governs communications with the Board. Presently, N.J.A.C. 14:1-1.6 requires all communications to be hand delivered or mailed to Board offices, and the official date of Board receipt of communications is the date of arrival at Board offices. However, as applied to comments on Board rule proposals, this conflicts with the rulemaking rules of the New Jersey Office of Administrative Law (OAL). OAL rules state at N.J.A.C. 1:30-5.4(d) that rule comments are deemed to be submitted within the comment period if postmarked within that period. Therefore, the proposed amendments to N.J.A.C. 14:1-1.6 exclude rule proposal comments from the section, and refer the reader to proposed new N.J.A.C. 14:1-1.6A for specific provisions regarding Board receipt of rule comments. Additional minor clarifications are also proposed.

Proposed new N.J.A.C. 14:1-1.6A specifically addresses submittal of comments on Board rule proposals. The new section sets forth the method for determining the submittal date for comments on Board rules, and resolves the existing inconsistency between the OAL rules and the Board's rules by clarifying that the postmark date will be used to determine whether comments sent by regular mail were submitted within the comment period. In addition, the new section establishes an eighteen month pilot study of Board acceptance of rule proposal comments by e-mail. The pilot study will enable the Board to evaluate the efficacy of accepting comments by e-mail.

Social Impact

The proposed amendments are likely to have a slight but beneficial social impact, in that they will clarify the Board's rules somewhat, and will make it slightly easier to submit comments on Board rule proposals.

Economic Impact

The proposed amendments are likely to have virtually no economic impact. If the amendments have any economic impact, it will be to slightly reduce the cost of submitting comments on Board rule proposals.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:3-7.12A is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for these proposed amendments.

Jobs Impact

The proposed amendments will have no impact on jobs in New Jersey. The amendments are very minor. They merely clarify existing rules, and establish a pilot study for submitting e-mail comments on rule proposals.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey. The amendments are very minor. They merely clarify existing rules, and establish a pilot study for submitting e-mail comments on rule proposals.

Regulatory Flexibility Analysis

The proposed amendments will impose no record-keeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. Because the rules establish a pilot study that will allow any citizen to submit e-mail rule comments for a limited time, it is impossible to determine how many small businesses are affected. However, the pilot study of the submittal of rule proposal comments by e-mail may reduce the burden of commenting on rules for all interested parties, including small businesses.

Smart Growth Impact

The Board anticipates that the proposed amendment will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development. Therefore, the proposed amendments will not impact smart growth or the State Plan.

Full text of the proposed amendment follows (addition's indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 1 RULES OF PRACTICE SUBCHAPTER 1 GENERAL PROVISIONS

14:1-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Board" means the Board of Public Utilities.

"Commissioner" means a member of the Board of Public Utilities.

"Secretary" means the Secretary, Assistant Secretary or any other person duly authorized to act in such capacity by the Board.

"Person" means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof. A person may or may not be a regulated entity.

"Presiding officer" means any member of the Board or a staff member who is designated as a hearing examiner in an uncontested case.

14:1-1.6 Communications

(a) All communications, including formal pleadings, correspondence and other papers, shall be addressed to the Secretary, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

(b) All [such pleadings and correspondence] communications, except for comments on rule proposals, shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing. Comments on rule proposals shall be deemed to be officially received in accordance with N.J.A.C. 14:1-1.6A.

(c) [As (a) and (b) above require that all correspondence be addressed to the Board's Secretary and that said submissions shall be deemed to be officially received when delivered at the office of the Board, any documents received] If the Board receives a document via fax, the document will neither be date/time stamped as formally received by the Board nor be entered into the case record or rulemaking record. Such documents shall only be distributed to the addressee.

14:1-1.6A Submittal of comments on rule proposals, pilot study for electronic submittal

- (a) This section governs submittal of comments on all rule proposals published by the Board in the New Jersey Register. This section also establishes a n eighteen month pilot study to test the efficacy of Board acceptance of rule proposal comments in electronic form.
- (b) The pilot study authorized under this section shall begin upon the publication date of the first rule proposal published by the Board in the New Jersey Register after {adoption date of this rule}. The pilot study shall continue for eighteen months.
- (c) Comments on rule proposals shall be submitted by e-mail, hand delivery, or regular mail, on or before the date identified in the rule proposal published in the New Jersey Register.
- (d) Rule proposal comments shall not be subject to the requirements for number of copies at N.J.A.C. 14:1-4.2. Instead, if rule proposal comments are submitted by hand delivery or regular mail, there shall be submitted to the Board an original and five copies of the comments.
- (e) The date upon which a comment on a rule proposal shall be deemed received shall be as follows:
1. The date upon which the Board receives the comment at an e-mail address set forth in the published proposal. If no e-mail address for comments is provided in the proposal, the Board shall not accept or make part of the rulemaking record a comment submitted by e-mail;
 2. The date upon which the comment is hand delivered to Board offices, to a Commissioner, or to the Secretary; or
 3. The date upon which a comment sent by regular mail to Board offices is postmarked, in accordance with N.J.A.C. 1:30-5.4(d).
- (f) Within six months after the completion of the pilot study authorized by this section, the Board shall either issue an order or publish rule amendments. The order or rule amendments shall briefly summarize the results of the pilot study and shall continue, modify, or end the acceptance of rule proposal comments in electronic form.